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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8983 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PARMAR JAYDRATHSINH

CHANDRASINH

Versus

TALUKA PANCHAYAT

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Appearance:

MR NV SOLANKI for Petitioner

MR HS MUNSHAW for Respondent No. 1

SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/08/96

ORAL JUDGEMENT

1. The petitioner Jaydrathsinh Chandrasinh Parmar, an elected member of the Taluka Panchayat, Halol has filed this Special Civil Application under Article 226 of the Constitution challenging the Constitution of the Social Justice Committee and Executive Committee of the Taluka Panchayat, Halol. The say of the petitioner is

that, a Meeting of the elected members of the Taluka Panchayat was held on 11.08.1995 and on that day, an Executive Committee was constituted consisting of five members and so, as Social Justice Committee. By another resolution dated 06.10.1995, four more elected members were inducted to the Executive Committee.

2. It is contended by Mr N.V.Solanki, learned counsel for the petitioner that, so far as the Social Justice Committee is concerned, its constitution is bad for the reason that, in view of the sub-clause 3(2)(ii) of the Gujarat Taluka Panchayat Social Justice Committee (Constitution and Functions) Rules, 1995, it is necessary to have atleast one elected member from the Scheduled Castes or Scheduled Tribe. It is submitted that all the three members are from Schedule Tribes and there is none from the Scheduled Caste. With respect to the Executive Committee, it is contended that the Taluka Panchayat, in its meeting held on 11.08.1995, constituted Executive Committee consisting of five elected members. There was an objection to the effect that the maximum members in constituting the Executive Committee is nine and therefore, nine persons should be elected to the said Committee. In spite of this objection, only five members were elected and by a subsequent resolution dated 06.10.1995, four more members were added by election. It is thus, contended that the resolution dated 06/10/1995 is illegal for two reasons, firstly that it amounts to modification and alterations of the resolution dated 11.08.1995 and secondly, it also shortens the period of members of the Executive Committee who were elected under resolution dated 06/10/1995.

3. On the other hand, it is contended by Mr H.S.Munshaw, learned counsel for the Taluka Panchayat that, so far as the Social Justice Committee is concerned, the requirement provided under sub-rule (2) of the Rules of 1995, cannot be considered to be mandatory, in view of the fact that sub-clause (7) of section 123 of the Act of 1993 prohibiting a member of panchayat to be a member of more than two committees constituted under the said provision. With respect to the Executive Committee, it is submitted that the provisions of sub-section (2) of section 123 of the Act only provides the outer numbers of the Executive Committee and it is always open for the Taluka Panchayat to elect the members of the Executive Committee on different dates. The only rigor is that they cannot elect more than nine members. It is also submitted that the resolution dated 06.10.1995 is independent and it does not amount to modification or alteration of the resolution dated 11.08.1995.

4. In order to appreciate the contentions, it would be necessary to acquaint with some of the provisions of the Panchayat Act and the Regulations. Part II of the Gujarat Panchayat Act, 1993 deals with the provisions relating to the Taluka Panchayat. Part-A deals with the conduct of business. Section 123 provides for the constitution of the Taluka Panchayat Committees, their powers, functions and duties. Sub-section (1) provides that the constitution of the Executive Committee as well as Social Justice Committee. Executive Committee exercises such powers and performs such functions and duties of the Taluka Panchayat as the Taluka Panchayat may assign to it. The Executive Committee has also been empowered to appoint more Sub Committees maximum to two. The Social Justice Committee performs such functions which are considered essential for securing social justice to the weaker sections of the societies, including persons belonging to Scheduled Castes and Scheduled Tribes, as may be prescribed. Sub-section (2) of section 123 of the Act provides for more Committees, in addition to the Executive Committee and Social Justice Committee. Sub-section (3) provides that no committee other than Executive Committee shall consist of more than five members. So far as the Executive Committee is concerned, it is provided that it shall not consist more than nine members. Sub-section (7) provides a prohibition for a member of the panchayat to be member of more than two committees. Sub-section (9) provides the term of the committees. The term of the Social Justice Committee is one year, whereas the term of the Executive Committee is two years. For the convenience, section 123 is reproduced as follows :

Section : 123 : Taluka Panchayat Committees, their constitution, powers, functions and duties :

(1) A taluka panchayat shall constitute the following committees, namely :-

(i) An Executive Committee, for exercising such powers and performing such functions and duties of the taluka panchayat (not being functions pertaining to its Social Justice Committee), as the taluka panchayat may assign to it;

Provided that it shall be lawful for the Executive Committee to appoint not more than two sub-committees from amongst its members but the sub committee so appointed shall not be competent

to take any final decision on any manner.

(ii) A Social Justice Committee for performing such functions as are considered essential for securing social justice to the weaker sections of the society including persons belonging to the scheduled castes and the scheduled tribes as may be prescribed.

(2) In addition to the committees referred to in sub-section (1), a taluka panchayat may, with the previous approval of the State Government, constitute a committee or committees consisting of such number of members of the panchayat as the panchayat may determine, to execute any work or scheme decided upon by the taluka panchayat or to inquire into the report to the taluka panchayat on matters which the panchayat may refer to such committee or committees. The taluka panchayat may make regulations for the procedure to be followed by any such committee.

(3) No committee other than the Executive Committee shall consist of more than five members and the Executive Committee shall consist of not more than nine members.

(4) ....

(5) ....

(6) ....

(7) (a) No member of the panchayat shall be a member of more than two committees constituted under this section.

(b) ....

(c) ....

(d) ....

(8) ....

(9) (a) The term of each of the committee, other than the Executive Committee and the Social Justice Committees shall be for such period not exceeding one year as may be determined by the panchayat.

(b) The term of the Executive Committee shall be two years and on the expiry of its term, the committee shall be reconstituted and the term of the Social Justice Committee shall be co-extensive with the duration of the panchayat.

Provided that where the unexpired  
part of the duration of the panchayat,  
during which the Executive Committee  
shall be co-extensive with the unexpired  
part of the duration of the panchayat.

(10). .....

(11). .....

4. The State Government, in exercise of powers under  
sub section (1) of section 274 read with section 123 of  
the Gujarat Panchayat Act, 1993, has made the Rules known  
as Gujarat Taluka Panchayat Social Justice Committee  
(Constitution and Functions) Rules, 1995 (hereinafter  
called the Rules of 1995). Sub-rule (3) deals with the  
constitution of the panchayat as follows :

### 3. Constitution of Committee :

(1) The Social Justice Committee of a Taluka  
Panchayat shall consist of not less than  
five members.

(2) The Panchayat shall constitute the  
committee from amongst its elected  
members of the Panchayat in the following  
manner :-

(i) One member belonging to the  
Valmiki (Safai Kamdar) Community;

(ii) Three members belonging to  
Scheduled Caste and Scheduled  
Tribe;

(iii) One women member from scheduled  
Castes or Scheduled Tribes;

Provided that the number of members of  
the panchayat elected on the seats  
reserved for the Valmiki Community,  
Scheduled Castes or Scheduled Tribes  
falls short of the number of the members  
to be appointed on the Committee, the  
panchayat shall co-opt on the committee  
such persons from amongst Valmiki  
Community, Scheduled Castes or Scheduled  
Tribes as are qualified to be elected as  
members of the panchayat :-

Provided further that where a woman

member as aforesaid is not available for appointment, it shall be permissible for the panchayats to co-opt a woman from amongst the women belonging to categories mentioned in clause (iii) above as are qualified to be elected as members of the panchayat.

5. A reading of the provisions shows that the Social Justice Committee is to be constituted only from the elected members of the panchayat, out of which one member must belong to Valmiki (Safai Kamdar), one woman member from Scheduled Castes or Scheduled Tribes and three members belonging to Scheduled Castes and Scheduled Tribes. The emphasis is on word "and" employed in the said provision between the word Scheduled Castes and Scheduled Tribes. The contention therefore is that out of the three members, one member necessarily has to be either of the Scheduled Castes or the Scheduled Tribes.

6. So far as the constitution of the Executive Committee is concerned, in view of the sub-section (3) of section 123 of the Act, the composition of the committee is of not more than nine members. The term of the committee is two years, as provided under sub-clause (9). Ordinarily, it is expected that the entire committee is constituted in one meeting. But for any reason, if nine members are not elected at one time, it will not cause any illegality in the constitution of the committees. The sub-section (3) of section 123 only provides for the outer limits of the members of the committee. Thus, there is no substance in the contention of the learned counsel Mr Solanki that the elections of the members at different times will curtail the period of the members of the executive committee. Reading of the provisions of section - 9 will clearly show that the term of the executive committee is of two years and on expiry of the term, new committee shall be constituted. Thus, the period of two years has to be reckoned from the first date of the constitution of the committee. In the present case, the executive committee was constituted on 11.08.1995 and as such, its term will expire on 10.08.1997. Similarly, the term of subsequently elected four members shall also expire on 10/08/1997 i.e. with the term of the committee. The provisions provide the term of the committee and not of the term of the individual members of committee.

7. Mr Solanki has next referred to section 128 of the Act of 1993 which provides that no resolution of the Taluka Panchayat shall be modified, amended, varied or cancelled by Panchayat within a period of three months from the date of passing thereof, except by resolution submitted by two-third of the total numbers of the members of the said panchayat. I have gone through the proceedings of 11.08.1995 and 06.10.1995. In my view, the resolution pertaining to the induction of four members by way of election to the executive committee does not amount to modification or cancellation of the resolution dated 11.08.1995. In view of this, there is no substance in this contention as well.

8. So far as the social justice committee is concerned, the Taluka Development Officer has filed an affidavit and has pointed out the constitution of the social justice committee, as follows :

- (1) (i) Shri Ramabhai R. Rathawa
- (ii) Shri Devjibhai Bhilabhai Rathawa
- (iii) Shri Tersingbhai C. Naik
- (All Scheduled Tribes)

2. Mrs Sajliben T. Rathwa - Scheduled Tribes

3. Girish G. Solanki - Co-opted Member belongs to Valmiki community (Safai Kamdar Community)

9. It is argued by Mr Munsha that the provisions of sub-clause (2) of the Regulation Rules of 1995 pertaining to the constitution of the social justice committee has to be construed directory as situation may arise that there may not be any candidate belonging to Scheduled Castes or Scheduled Tribes or Women Member available for the reason that they have already been elected or coopted in any other committees and in view of sub section (7) of section 123, no member of the panchayat can be a member of more than two committees constituted under said section. A clear reading of sub-section (2) of Rules 1995 will indicate that, at the first instance, the committee can consist of only elected members of the panchayat and secondly, there has to be one member from the Valmiki (Safai Kamdar) Community and one woman from Scheduled Castes and Scheduled Tribes and further, three members belonging to Scheduled Castes and Scheduled Tribes. It will be seen that, while under sub-clause (2), the word 'and' has been used between the words Scheduled Castes and Scheduled Tribes. Under sub-clause (iii) the word 'or' has been used between the Scheduled Castes and Scheduled Tribes. This clearly indicates the

intention of the framers of the Rules that there must be presence of atleast one member of Scheduled Castes or Scheduled Tribe under item No.2. The total absence of a person belong to either of will defeat the purpose of the rule. However, there is substance when Mr Munsha says that a difficult situation may arise when no member of Scheduled Caste or Scheduled Tribe is available for the reason that the persons of such Castes and Tribes have already been coopted in two other committees. Thus, the reading of the provision as a whole and not in isolation keeping in view the object of the provisions, in my view, the rule is of mandatory nature and breach of rule will invalidate the constitution of the committee, except in a case where the person belonging to Scheduled Caste or Scheduled Tribe is not available for good and sufficient reason. It is however to be made clear that, if a member is not available from Scheduled Caste or Scheduled Tribe, all the three may be co-opted from the one community i.e. Scheduled Caste or Scheduled Tribe, but no person who is not elected member of the panchayat will be eligible for co-option in the committee.

6. In the instant case, it is pointed out that Mr Harjibhai Vaghjibhai Helaiya is a member belonging to scheduled castes and he has not been co-opted in any of the committees and as such, he is available for being co-opted under item (2) of sub-rule (2) of the Rules of 1995 in the category of the scheduled caste. At this stage, I am told that, in fact, Harjibhai Vaghjibhai Helaiya has also filed a Civil Application to be impleaded him as a party in this Special Civil Application through Advocate - Mr A.J.Shashtri. The said application has not been placed before this Court inspite of the oral directions. Be that as it may, Mr A.J.Shashtri is available to assist the Court. He submits that said Shri Harjibhai Vaghjibhai Helaiya is an elected member of the panchayat and is not a member of any of the committees. It goes without saying that there must be some political equations and the said gentleman may be in minority and therefore, the majority may not be interested in inducting him in the social justice committee, but the legislation has not given that option to them. The provision being mandatory to the extent as indicated above, it is obligatory on the Taluka Panchayat to induct at least one person belonging to Scheduled Caste or Scheduled Tribe under item No.(2) of sub-rule (2) of the Rules of 1995.

7. Mr Solanki has made an attempt to argue with respect to the election of the Chairman of the Executive



Committee as well as the Social Justice Committee and further, the manner in which they are conducted. Learned counsel cannot be permitted to argue on this point as there is no material on record in this regard. Even otherwise, the appointment of the Chairman of the said Committees cannot be entertained in view of the fact that, more than one year has expired.

8. In view of the aforesaid, this Special Civil Application is partly allowed. The respondent Taluka Panchayat is directed to reconstitute the Social Justice Committee, inducting the members only from the elected members of the Panchayat and further, under item (2) of sub-rule (2), there must be at least one member from the scheduled castes and one member from scheduled tribes. The Taluka Panchayat will carry out the directions within a period of one month from the date of receipt of the writ. Rule made absolute to the aforesaid extent.

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